

ENTERED

March 01, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL COLE,

Plaintiff.

VS.

C.R. BARD, INC., ET AL.,

Defendants.

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CIVIL ACTION NO. 4:20-CV-01630

**ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION**

On January 8, 2021, Defendants C.R. Bard, Inc. And Bard Peripheral Vascular, Inc.'s Motion to Dismiss, Motion to Strike, and Motion for More Definite Statement (Dkt. 13) was referred to United States Magistrate Judge Andrew M. Edison under 28 U.S.C. § 636(b)(1)(B). *See* Dkt. 25. On February 11, 2021, Judge Edison filed a Memorandum and Recommendation (Dkt. 27) recommending that Defendants' Motion (Dkt. 13) be **GRANTED** in part and **DENIED** in part.

On February 25, 2021, Plaintiff filed his Objections. *See* Dkt. 28. In accordance with 28 U.S.C. § 636(b)(1)(C), this Court is required to "make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection [has been] made." After conducting this de novo review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.*; *see also* FED. R. CIV. P. 72(b)(3).

The Court has carefully considered the Objections; the Memorandum and Recommendation; the pleadings; and the record. The Court **ACCEPTS** Judge Edison's Memorandum and Recommendation and **ADOPTS** it as the opinion of the Court. It is therefore **ORDERED** that:

- (1) Judge Edison's Memorandum and Recommendation (Dkt. 27) is **APPROVED AND ADOPTED** in its entirety as the holding of the Court;
- (2) Defendants' Motion (Dkt. 13) is **GRANTED** in part and **DENIED** in part. Specifically, Defendants' motion to dismiss Cole's claims for strict products liability—design defect (Count 3), breach of express and implied warranty (Counts 5 and 6), and fraudulent and negligent misrepresentation (Counts 7 and 8) is granted, Defendants' motion to dismiss Cole's claim for punitive damages is denied, and Defendants' requests for relief under Rules 12(e) and 12(f) are denied; and
- (3) Plaintiff's request to amend his complaint is **DENIED**.

It is so **ORDERED**.

SIGNED and ENTERED this 26th day of February, 2021.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE